

## REMARKS

### A. Introduction

In the non-final Office Action mailed on September 7, 2004 (paper number 13), the Examiner rejected claim 9 under 35 U.S.C. § 101, and rejected claims 1-8 and 18-20 under 35 U.S.C. § 102(a) over U.S. Patent Number 5,640,553 to Schultz ("Schultz"). For the reasons set forth in detail below, Applicant respectfully submits that the present application, including each of pending claims 1-9 and 18-20, is now in condition for allowance.

### B. Rejection Under 35 U.S.C. § 101

The Examiner rejected claim 9 under 35 U.S.C. § 101 as being directed to nonstatutory subject matter. The Examiner indicated that a memory containing a data structure not recited as being accessed by a processor is nonstatutory subject matter. Applicant respectfully disagrees.

It is the Patent Office's position that a computer-readable medium containing data structures is statutory subject matter. According to M.P.E.P. § 2106(IV)(B)(1)(a):

[A] claimed computer-readable medium encoded with a *data structure* defines structural and functional interrelationships between the data structure and the computer software and hardware components which permit the data structure's functionality to be realized, and is thus statutory. (Emphasis added.)

M.P.E.P. § 2106(IV)(B)(1) adds:

The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5<sup>th</sup> ed. 1993).

Applicant's data structure is clearly a data structure within this definition, as it defines the logical relationship between the rating scores and the extent to which

users have selected each item from query results before. Thus, these claims are directed to statutory subject matter.

The Examiner indicated that claim 9, which Applicant previously requested to have added to the group of claims elected in response to a restriction requirement, would be added to the elected claim 1 if shown to meet the requirements of 35 U.S.C. § 101. In light of the above remarks, Applicant respectfully requests that Examiner withdraw the objection to claim 9, and that claim 9 be included as part of the elected group of claims.

C. Rejection Under 35 U.S.C. § 102(a)

The Examiner rejected claims 1-8 and 18-20 under 35 U.S.C. § 102(a) over Schultz. Applicant respectfully submits that Applicant's claimed technology contains unique elements not found in Schultz.

Schultz describes a method in a computing system for ranking items in a search result. Schultz's method contains three steps: (1) each term in the query is given a relevance rating based upon its part of speech and other criteria such as whether it is a proper noun (col. 23, lines 21-31); (2) the query terms and their relevance ratings are fed into a software query engine that produces a query result containing items and, for each item, a ranking based on such criteria as occurrence of the specified terms and their distances from other specified terms (col. 23, line 66 – col. 24, line 21); (3) the rankings returned by the query engine are normalized to account for a tendency of the query engine to rank results for short queries higher than those for long queries (col. 25, lines 24-39). Schultz's method only describes the way in which a single query is performed. Schultz does not teach using a user's selections in prior query results to refine the results displayed to subsequent users. Schultz also does not teach accounting for the level of effort required for a user to select a particular result in order to rate that result more favorably for subsequent users. Further, while Schultz does disclose tracking users' selections (col. 36, lines

34-54), Schultz only teaches using this information for the computation of royalties for sponsored links.

Applicant's technology, in contrast, is directed to a method of improving the search results returned to users by observing what prior searching users have found to be the best results. Applicant's technology does this by recording the selections made by each user as they search, and, in some cases, by noting the level of effort required to select a particular item. Claim 1 recites "combining ratings reflecting both (a) the frequencies with which users selected the item in query results produced for earlier queries...and (b) levels of effort required to make such selections." Claim 6 recites "for items selected from the query result...determining an adjustment factor indicating the level of effort necessary to effectuate selection of the item." Claim 9 recites "reflecting quantitatively the extent to which users have selected the item from query results generated from queries specifying the query term and the level of effort required to make such selections." Claims 18 and 19 recite "combining ratings of frequencies with which users selected the item in earlier queries." Claim 20 recites "the rating score indicating the relative frequency with which users have selected the selected item." Thus, all of Applicant's independent claims recite one or both of these unique elements.

Each of the rejected claims contains unique elements not disclosed by Schultz. Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

D. Conclusion

In view of the above remarks, applicant believes the pending application is in condition for allowance, and respectfully requests a prompt notice of allowance. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0665, under Order No. 249768005US3 from which the undersigned is authorized to draw.

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Respectfully submitted,

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